IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.141 OF 1995

Punawasi Jitlal Saroj Appellant

Vs.

The State of Maharashtra Respondent

Mr.Ashok Kumar Singh for appellant - absent.
Mr.R.Y.Mirza, APP for State.

CORAM: S.S.PARKAR & ANOOP V.MOHTA,JJ.

April 04, 2005.

ORAL JUDGMENT (PER S.S.PARKAR,J.)

1. This appeal is filed challenging the judgment and order delivered by the Addl.Sessions Judge, Pune on 22nd March 1995 convicting the appellant-original accused no.1 for offence under Section 302 of IPC and sentencing him to RI for life and to pay a fine of Rs.100/- in default R.I. for three months in Sessions Case No.529 of 1992.

2. The prosecution case is that on the day of the festival of holi in the year 1992 the appellant and co-accused Ramprasad Pardeshi went to the house of the complainant Ajay Singh who was residing along with his brother deceased Vijay Singh in Galande Chawl in Vadgaon Sheri area. They had decided to see

a movie by hiring a TV and a VCR. For the purpose of bringing TV and VCR to their house handcart of the appellant was used. The deceased along with two accused brought TV and VCR on the handcart of the appellant to the complainant's room. After taking TV and VCR inside the room handcart was kept outside the room. Both the accused took dinner that night in the house of the complainant along with the deceased. They saw movie till 6.30 in the morning. Thereafter both the accused left the house while complainant and his brother slept in their room. At about 8 a.m. both the accused came back and awakened the complainant and his brother and told them that their handcart was stolen. When they could not trace the handcart it was decided that complainant and his brother would share half-half cost of the handcart which belonged to the appellant. As the complainant and his brother did not have the money that day they promised to pay Rs.700/- on 14/4/1992 by which date they would receive their wages. The accused went to collect Rs.700/- from the complainant and his brother on the night of 15/4/1992. Though deceased Vijay Singh had returned home from his work at 8 p.m. his co-employees had come to tell him that their employer wanted Vijay Singh back at work. His brother,

complainant Ajay Singh, therefore, prepared the tiffin for Vijay Singh. When Vijay Singh was about to leave home along with his co-employee both the accused went there and demanded the money. Vijay Singh told them that since the accused did not come to collect the money on previous day i.e. 14th April 1992 when they were called, they had spent the money. Saying this Vijay Singh left the house along with his fellow worker. Both the accused followed Vijay Singh. Soon the complainant heard the shouts of his brother calling for help. Complainant immediately rushed to the place which was hardly 30 steps from the house of the complainant where he saw accused no.1 stabbing deceased Vijay Singh and accused no.2 assaulting him with sword. As complainant intervened to rescue his brother he also received injuries on his left elbow and thigh. Vijay Singh fell down due to the stabbing on the left side of his chest with a knife by the appellant. Thereafter both the accused ran away.

3. Complainant immediately took his brother to a nearby hospital of Dr.Warpe called Nirmay Hospital. He declared Vijay Singh dead before his admission. On being asked by the Doctor the complainant named

both the accused as the persons who had assaulted deceased Vijay Singh and the complainant. Doctor informed the police on telephone about the dead body. Police came and recorded the statement of Ajay Singh in the said hospital itself which is produced as Exhibit 14 on record on the basis of which crime was registered against both the accused. Dead body was sent to Sassoon hospital for post-mortem examination. In the night itself PSI went to the place of incident along with the complainant. Since it was dark due to night police were kept there to guard the place of offence and spot panchanama was drawn next morning. At the place of incident tiffin containing food of deceased Vijay Singh was found lying there. They also found a goggle, a glass and a tobacco packet at the place of incident. The accused had also gone to the police station for lodging their complaint of assault which was recorded by the police and both the accused were arrested. At the time of arrest the clothes of the accused which were blood stained were taken into custody under panchanama (Exh.11). Complainant as well as the accused were sent for examination by the doctor. Statements of other witnesses were recorded by the police. Blood samples of the complainant, deceased as well as the accused

were taken and sent for examination to CA. The clothes of the deceased and the accused which were attached under panchanamas were also sent to CA for examination. After arrest the appellant volunteered to produce the weapons from the place where they were hidden by him. The memorandum of statement (Exh.18) was recorded pursuant to which recovery of knife and sword, both blood stained, was made at the instance of accused no.1. Those weapons were also sent to CA for examination. After completion of the investigation charge-sheet was filed and the case was committed to the Sessions Court.

4. Before the Sessions Court charges were framed for offences under Sections 302 and 324 read with Section 34 of IPC to which both the accused pleaded not guilty. On behalf of the prosecution six witnesses were examined. PW 1 is Ajay Singh, brother of the deceased who was an eye witness to the incident and had lodged his complaint same night to the police. PW 2 is Dr.Pherwani who had conducted autopsy on the dead body. PW 3 is Mahadeo Pujari who had acted as panch for the discovery of knife and sword at the instance of the appellant. PW 4 is Dr.Sanjay Deshmukh who had examined both the accused

on 15/4/1992 at 11.30 p.m. He had also examined the complainant on 16/4/1992 at 3.30 a.m. PW 5 is Dr.Anil Warpe to whose hospital the deceased was taken by the complainant. Lastly PW 6 is PSI Bhat who investigated the case. The defence of the accused was of self-defence. According to them when they had gone to demand money from Vijay Singh, complainant Ajay Singh attacked them with a sword and Vijay Singh was also beating them and, therefore, there was scuffle in which Ajay Singh and Vijay Singh sustained injuries by sword.

5. After considering the evidence on record the trial Court acquitted both the accused of the offence under Section 324 of IPC as regards assault on the complainant Ajay Singh. Accused no.2 was acquitted of the offence of murder of deceased Vijay Singh also. Accused no.1 i.e. the appellant was, however, convicted for offence under Section 302 of IPC and sentenced as above. The said order of conviction of the appellant is under challenge in this appeal.

6. Though the appeal is on board since long and the Advocate for the appellant was not present today also when the appeal was called out serially being at

serial no.2 on the board today, we heard the APP, and went through the entire evidence on record including memo of appeal and find no substance in this appeal. We accordingly dispose of this appeal following the ratio of the decision of the three Judge Bench of the Supreme Court in the case of Bani Singh v. State of U.P. reported in 1996 Cri.L.J. 3491.

7. PW 1 Ajay Singh, brother of the deceased was an eye witness to the incident. He has deposed about the motive for the accused to stab Vijay Singh. On the night of incident both the accused had come to demand a sum of Rs.700/- towards the half cost of the handcart of the appellant which was stolen on the night of holi when the accused along with the complainant and deceased Vijay Singh were seeing movie on hired VCR and TV in the house of the complainant. Deceased Vijay Singh had promised to pay a sum of Rs.700/- after receiving his salary on 14/4/1992. Instead of going to the house of the deceased on 14/4/1992 the accused had gone to his house on 15/4/1992 when Vijay Singh told them that he had spent the money as they did not go to him on the earlier day on which day he had promised to pay a sum of Rs.700/-. At that time Vijay Singh was leaving

the house to attend to his work as he was called by his employer. Vijay Singh had walked about 30 steps from his house when he was assaulted by the accused. As he was being assaulted he shouted for help pursuant to which his brother Ajay Singh went to rescue Vijay Singh. In the process he also received injuries on his person. Complainant has deposed that the appellant had stabbed Vijay Singh in his chest and accused no.2, who was acquitted, was assaulting him with sword. When complainant rushed there he tried to rescue his brother but in the process he received injuries from the sword of accused no.2. His evidence about the assault is corroborated by the medical evidence.

8. PW 2 Dr.Pherwani found following two external injuries on the person of the deceased:

> (1) Stab wound present on the left side of the chest in front 3rd intercostal space mid clavicular line 3/4th inch by 1/4th inch into going deep in the chest cavity, margins were regular, ante mortem clots were present.
>
> (2) An area of contused abrasion present on the left shoulder 2" by 1".

According to the doctor both the injuries were ante mortem and were of recent origin and were caused by hard and edged weapon. On internal examination the

doctor had found the muscles and blood vessels cut in the chest wall corresponding to external injury no.1. He also found the plueral cavity full of blood. Left lung showed stab injury with blood all around. The heart showed stab injury with blood all around. According to the doctor the internal damage was corresponding to external injury no.1. The cause of death was traumatic and haemorrhagic shock due to stab injury. The medical officer has deposed that external injury no.1 along with corresponding internal damage on the deceased was possible by blow of weapon like knife article no.14 which was shown to him in the Court. He has also stated that considering the injury it appears that the blow was given forcefully. He was also shown muddemal article no.15 - sword but he has ruled out the possibility of external injury no.1 being possible due to assault by sword. In the cross-examination he has categorically denied that if a person fell on a pointed object stab injury was possible on the dead body.

9. The prosecution has also led the evidence of panch Pujari PW 3 as regards the discovery of blood stained knife and sword at the instance of the appellant. Both the accused were arrested on the

night of the incident. On 18/4/1992 the appellant had volunteered to produce the knife and sword hidden by him. Accordingly two panchas were summoned. In their presence accused had made statement which was recorded in Exhibit 18. Pursuant to the said memorandum statement accused had led the police and panchas to Vadgaon Sheri road a little ahead of Vishnu Metal Company. He took them near a chawl behind Vishnu Metal Company in room no.1 from where he took out a knife (article 14) and a sword (article 15) from a heap of bricks near the southern wall. In order to take out the knife and sword he had removed the brick pieces. Those muddemal articles were attached under seizure panchanama (Exh.19). Both the weapons were found blood stained.

10. At the time of their arrest the clothes of both the accused were also attached under seizure panchanamas. They were having blood stains on them. As per the CA report dated 31/7/1992 (Exh.38) the clothes of accused no.1 were stained with human blood of group "O" and the human blood on the clothes of accused no.2 was of "B" as well as "O" group. The clothes of the deceased were found stained with blood of group "O". Similarly spectacles or goggles and

the tobacco packet which were attached under the spot panchanama were also found stained with blood of group "O". The blood group of accused no.1 was "O" as per the CA report dated 30th June 1992 (Exh.35). The complainant's blood group was also "O" as per CA report (Exh.34).

11. Apart from the deceased the complainant as well as both the accused had injuries on their persons. They were examined by Dr.Sanjay Deshmukh, PW 4. As per his evidence the complainant had following three injuries on his person:

> (1) Incised wound over the dorsal aspect of left elbow joint which was already sutured. So the linear diameter 2".
>
> (2) Incised wound on the left elbow which was also sutured having dimension of 1".
>
> (3) C.L.W. over the right lower limb 2" above the knee joint which was having one sutured of size half inch by 1/4th inch by 1/4th inch.

He had two incised wounds on the left elbow and left elbow joint and one CLW above thigh. Accused no.1 had received one CLW over the scalp left parietal region 1" x 1/4". Second injury on the person of appellant was CLW over left side of chest measuring 1" x 1/2". Similarly accused no.2 had received one incised wound over the left ring finger measuring

1-1/2" x 1/2" x 1/2" and abrasion on the palmer aspect of left hand admeasuring 1" x 1/4". According to the medical officer the injuries of both the accused were simple. Though initially doctor suspected fracture of left ulna of accused no.1 but ultimately after receiving the report from Orthopedic Department it was clear that no fracture was caused to accused no.1.

12. The question, therefore, is whether the accused have succeeded in proving their defence of exercise of right of private defence. The trial Judge after considering the injuries on the persons of two accused and complainant himself is of the opinion that since the accused were expecting the deceased to pay a sum of Rs.700/- as promised earlier, accused no.2 would not openly go out with a sword in his hand and accused no.1 might be carrying knife in his pocket, not necessarily with a view to assault the deceased. In other words the incident of assault took place because deceased Vijay Singh told them that they should have come a day earlier as promised and he had spent the salary amount as they did not come to take the money on 14/4/1992. Because of this reply the accused must have felt that Vijay

Singh had no intention to pay the amount and, therefore, accused no.1 must have assaulted the deceased with a knife. As regards the sword the trial Court was of the view that after seeing that his brother was being assaulted when he shouted for help, complainant may have carried the sword from his house in order to defend his brother. We have no reason to take a different view in the facts and circumstances of the case.

13. The spot panchanama also corroborates the evidence of the complainant that at the relevant time the deceased had left his house to go to his work by carrying his food in a tiffin which was found lying at the place of incident. The incident had taken place just outside the house, about 30 ft. from the house of the complainant. Whether the accused had expected or not the deceased to make their payment and whether the accused had carried the knife intentionally with a view to assault the deceased or not, there can be no doubt that when deceased told the accused that he had spent the money as they had come one day late, the accused must have felt that deceased had no intention to pay the sum of Rs.700/- and, therefore, accused no.1 must have stabbed the

deceased with an intention to murder him. Even if it is assumed that the complainant may have taken sword from his house, he cannot be considered as an aggressor. When his brother shouted for help and if complainant seeing the danger to the life of his brother goes there with a sword in order to defend his brother there can be no doubt that the appellant was the aggressor. If the complainant and his brother were the aggressors they would have taken the law into their hand at the threshold of their own house when the demand was made by the accused for payment of Rs.700/-. Maybe the complainant and his brother did not want to pay the amount of Rs.700/- but there was no reason for them to assault accused no.1 because of the demand of Rs.700/-. As accused no.1 felt that the deceased was avoiding to pay and had no intention to pay the amount he must have assaulted the deceased with knife and then it matters less whether it was accused no.2 who was carrying the sword in his hand from the beginning or he had snatched it from the hands of complainant who might have gone there only to rescue his brother Vijay Singh from the assault that was made on him by the accused. If the complainant and the deceased had been the aggressors they would have assaulted the

accused near the door of their house itself in which case the deceased would not have left the place for work along with his tiffin which was attached under the spot panchanama.

14. As it is accused no.2 has been acquitted by the trial Court on the ground that it was likely that the complainant might have gone out with a sword in his hand which must have caused incised wound to the left hand ring finger of accused no.2 when the latter wanted to ward off the assault made on him by the complainant and to snatch away the sword from the hands of the complainant. That is how the benefit has been given to accused no.2 by the trial Court. So far as assault by the appellant is concerned there is nothing on record to hold that there was any sudden provocation given to him by the act or words of the deceased which would bring the case under any of the exceptions. Since the deceased was stabbed with a knife forcefully on the left side of his chest causing severe damage internally which led to the instantaneous death of the deceased which was as per the evidence of the medical officer sufficient in the ordinary course of nature to cause death, there is no doubt that the appellant had intended by his act to

cause death of the deceased attracting clause one of section 300 of IPC. The evidence of the eye witness is corroborated by the medical evidence and the immediate complaint lodged on the same night by the complainant. The case of the prosecution is further supported by the recovery of blood stained knife and sword at the instance of the appellant. Thus the prosecution has squarely proved the offence of murder against the appellant. We have, therefore, no hesitation in confirming the order of conviction and sentence recorded by the trial Court by the impugned judgment.

15. In the result, the order of conviction and sentence recorded by the Addl. Sessions Judge, Pune by the impugned judgment and order dated 22/3/1995 in Sessions Case No.529 of 1992 against the appellant is confirmed and the appeal is dismissed. The appellant-original accused no.1-Punawasi Jitlal Saroj shall surrender to his bail forthwith.

(S.S.PARKAR,J.)

(ANOOP V.MOHTA,J.)